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# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:	)	MB DOCKET No.: 04-191
	)	
SAN FRANCISCO UNIFIED	)	File No.: EB-04-IH-0270
SCHOOL DISTRICT	)	
	)	
STATION KALW (FM)	)	
For Renewal of License	)	

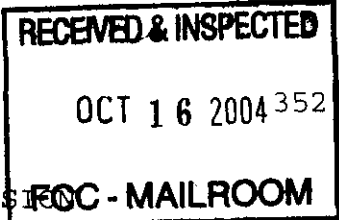
INTERVIEW OF NICOLE SAWAYA

Volume: 4  
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Date: September 28, 2004

## HERITAGE REPORTING CORPORATION

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# ORIGINAL



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Suite 200  
Renne, Sloan, Holtzman & Sakai  
188 The Embarcadero  
San Francisco, CA

Tuesday,  
September 28, 2004

The parties met, pursuant to the notice of the  
Judge, at 3:45 p.m.

APPEARANCES:

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I N D E XWITNESSES:PAGE

NICOLE SAWAY

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Testimony Began: 3:45 p.m.      Testimony Ended: 5:38 p.m.

1                    P R O C E E D I N G S

2                    MR. SHOOK:    Would you swear in the witness.

3                    COURT REPORTER:    Please raise your right hand.

4                    Whereupon,

5                    NICOLE SAWAYA

6                    was called as a witness herein and, having been duly sworn,

7                    was examined and testified as follows:

8                    E X A M I N A T I O N

9                    BY MR. SHOOK:

10                  Q     Could you state your name please?

11                  A     Nicole Sawaya.

12                  Q     And I know you've already spelled it for the Court  
13                  Reporter, so you don't have to do it again.

14                  A     Okay.

15                  Q     And what is your current address?

16                  A     499 Alabama Street, Suite 252, San Francisco  
17                  94110.

18                  Q     How long have you resided at that address?

19                  A     On and off since 1970.

20                  Q     What is your current occupation?

21                  A     General Manager KALW.

22                  Q     How long have you been the General Manager?

23                  A     Since March 1, 2001.

24                  Q     Prior to that time, let's go back ten years, if  
25                  you could give a brief description of your employment during

1     that period, from March 2001 back to 1991?

2           A     In 1991 I was still a journalist, I was an  
3     independent reporter in Public Radio. I worked out of the  
4     other Public Radio Station here in the city, KQED FM. I was  
5     also doing television work for them as well, on camera work.  
6     And I was a stringer for National Public Radio, NPR, and  
7     Monitor Radio at CAL NET, which was a California news  
8     service, defunct now. And I was also in the process of  
9     getting my degree at college.

10          Q     Okay. So, now did that situation basically go on  
11     from 1991 to 2001?

12          A     No. In 1993 I graduated, in January of 1993, and  
13     in April of 1993 I landed a job up in Filo, California, in  
14     Mendocino County, at a radio station, Public Radio Station  
15     KZYX, and I landed a part time job as Program Director. I  
16     then morphed into Station Manager towards the end, and I  
17     left KZYX December of 1995, and I had been recruited by  
18     National Public Radio to go out and work there, and decided  
19     to leave California. And I started at NPR, I believe it was  
20     January 17, 1996.

21          Q     So, that brought you to the Washington D.C. area?

22          A     Exactly right.

23          Q     And you stayed there for how long?

24          A     Almost two years to the day. I left, my last day  
25     was like December 20, 1997.

1 Q And you went from there to where?

2 A I had been recruited for several months, offered a  
3 job at KPFA, which is the flagship station in Berkeley  
4 California, as General Manager. And I took the reins, I  
5 think it was like the second week in January of 1998.

6 Q And you stayed there until when?

7 A Until March 30, 1999 when my contract was not  
8 renewed and I was given two hours to get my things out.

9 Q Welcome to the wonderful world of corporations,  
10 even non-profit ones.

11 A You're probably familiar with Pacifica.

12 Q My son loves it. I have a 23 year old son who  
13 loves it.

14 A WPFW.

15 Q Whatever he can listen to. So, what happened  
16 after that?

17 A After that I weathered the storm that ensued,  
18 trying to dodge the spotlight because I felt it wasn't about  
19 me. And I then worked at an organization called Pacific  
20 News Service, based here in San Francisco. And the have  
21 another project, they have two projects under them, one is  
22 YO, Youth Outlook, and I was one of the editors for Your  
23 Outlook, which is a magazine. And then they were also in  
24 the middle stages of forming an organization called New  
25 California Media, which is a consortium of about 400 to 800

1 ethnic language news organizations in California. So, I was  
2 brought on board as kind of a media consultant to help  
3 strategize unrolling a broader campaign to incorporate  
4 Southern California and the ethnic press in Central Valley.

5 Q And did that bring us up to March of 2001?

6 A It certainly does.

7 Q Okay. Now, you had mentioned that there was a  
8 period, and I think from a timing standpoint it would have  
9 been 1994-1995, in that range, I believe you had mentioned  
10 that you had become a Station Manager or General Manager at  
11 one of the stations?

12 A At KZYX, yes, in Mendocino.

13 Q And for what period of time were you the Station  
14 Manager or General Manager?

15 A The last six months of my tenure there.

16 Q That was a Public Radio Station, correct?

17 A Exactly right, yeah.

18 Q Now, at the time that you were the General Manager  
19 or Station Manager, I'm assuming from that title that you  
20 were the person in charge of running the operations of the  
21 radio station?

22 A Pretty much. We had gone from, when I became  
23 Program Director, the General Manager was kind of run out of  
24 town, they were eating General Managers and spitting them  
25 out one right after another. So, I proposed to the board,

1     it's a community licensee so it had a very hands on  
2     governance structure, very active community board, and I  
3     proposed to them why not do a flat top management, and that  
4     way the General Manager wouldn't be so targeted and instead  
5     all the people with all their beefs could go to three people  
6     as opposed to just one. And I felt that that would diffuse  
7     the situation politically, which it did. And then  
8     eventually the flat top didn't quite work out, the finance  
9     person really didn't want to be there, the pay was too low,  
10    so they just said, look, just be Station Manager, would you.  
11    And I go, okay. But, at that point things were pretty  
12    stabilized so I didn't feel so targeted.

13           Q     In the course of being the General Manager of that  
14    radio station, did you have any responsibility for preparing  
15    documents that would go into the H Public File?

16           A     The licensee took care of Ownership Reports, the  
17    engineer took care of any of the contour maps that might  
18    have changed. We were also in the process of bringing on a  
19    repeater station, KZYZ. I had gotten a PTFP grant for that.  
20    And what I was mostly responsible for were the Issues  
21    Programs List. So, it was an NPR member station, we would  
22    pull the NPR stuff. Well, at that time NPR's website was  
23    just being birthed, so there were other ways they got that  
24    to us, they faxed it out or they sent it in a packet. And  
25    we had a lot of local programming, a lot of it

1 controversial. So, I tried to really focus on what was the  
2 most controversial at that time, which was around the  
3 environment. We had Redwood Summer going on, there was a  
4 real tussle between loggers and people that wanted to save  
5 the trees. So, that's really what I focused on with regards  
6 to keeping track of all our public affairs programs.

7 Q In that position, did you physically prepare then  
8 the Issues Programs List that would have covered the period  
9 when you were the General Manager?

10 A I brought in from producers their run sheets and  
11 from that I would cull together who, what, how, when, where,  
12 topic, well, what is pretty much topic so, we didn't need  
13 the why, we knew why. Yes.

14 Q And then you would --

15 A And I put that in the file drawer where the Public  
16 File lived. The board took care of the rest of the Public  
17 File.

18 Q Right. But, in terms of the Issues Programs List  
19 that was a document that you actually prepared on behalf of  
20 the station?

21 A Once again, pulling together the producer's stuff,  
22 yes. I didn't put it into one single document, I pulled it  
23 together, these are our programs --

24 Q Okay. If one could gleam the information that --

25 A Exactly --

1           Q     -- the station required from looking at several  
2 documents but they were related and all in the same place?

3           A     Exactly.

4           Q     Now, when you became -- oh, let me ask another  
5 related question to something you had mentioned. You had  
6 said that, I think it was somewhere in the early nineties  
7 you graduated from college?

8           A     Uh-hum.

9           Q     What was your degree?

10          A     Bachelor of Arts, Communication Arts at San  
11 Francisco State University, Radio and Television.

12          Q     Okay. Now, when you became -- could you tell us  
13 how it was that you became General Manager of KALW?

14          A     At the time I was working for Pacific News Service  
15 and the KPFA brew ha ha was starting to die down, my name  
16 wasn't in the paper so much. And I actually received a call  
17 from Bill Helgeson, who I had met years ago when I worked  
18 for NPR, because I made a station visit to KALW. And Bill  
19 said, I've called around to a couple of people, they all  
20 recommend you, we have this job opening, would you consider  
21 applying. And I said, let's meet for coffee and talk about  
22 it, I'm a little reluctant, having just got out of the KPFA  
23 thing. So, that was it. We met for coffee, Bill told me  
24 about where I would find the job application, it was online  
25 at the time for SFUSD, they had posted it. And I said

1     what's, you know, what's going on at the station, is it in  
2     an uproar, what's going on. Oh no, no, no, everything is  
3     fine, and we really just need a really good Station Manager.  
4     So, I downloaded the application, it was a fairly rigorous  
5     application procedure what the District calls for, and I had  
6     to get all of the, not affidavits, they have a word for it  
7     where they want your former employer on their letterhead,  
8     signed, stating exactly where you had worked, the whole  
9     deal. So, I had to go and get those from way back. Some of  
10    the management had changed. NPR was reorganizing yet again.  
11    But, I was able to get all of them for the past, I think  
12    they required your last five jobs or whatever it was. And  
13    submitted all that with letters of recommendation and just  
14    my awards and things like that, that I thought would round  
15    out the application.

16           Q     From the time Mr. Helgeson spoke with you about  
17    the job possibility, until you were notified that you were  
18    hired, approximately how much time elapsed?

19           A     Probably about half a year.

20           Q     And in the course of that, did you speak with  
21    anyone at KALW or SFUSD about the job, was there like an  
22    interview process that you had to go through?

23           A     Yes. The first person that I spoke with, that  
24    called me in, was a man named Glenston Thompson and I went  
25    and had a conversation with him. And he said everything

1 looks good on paper, you look like you'd be a great  
2 candidate. The only thing I remember that he said, that  
3 stuck in my mind, he said this is a rebel town, we need a  
4 good radio station, and I was thinking that's Berkeley.

5 Q Not San Francisco?

6 A I didn't say anything. And then I didn't hear  
7 anything and I called Bill and I said, you know, what's up,  
8 what's going on with the process? And he said, oh, things  
9 are a little -- and another reorg at the district, so hang  
10 in there. And I said, well, I'm certainly not giving notice  
11 to my job. My son had just moved back in with me to go to  
12 high school. And so I really, you know, needed work of  
13 course and I wanted the stability for him. So, I said,  
14 well, I'm not giving notice. And then the next time I heard  
15 from the District I interviewed with a committee and that  
16 committee was made up of Bill Helgeson and a woman from the  
17 station's auditor, Joe Bunker, a woman Lisa Duran who works  
18 with Joe Bunker & Company. And then there was a man there,  
19 I don't know who he was, he's a professional television  
20 broadcaster and I think he does radio work as well but in  
21 commercial, he was also there. And we had a brief interview  
22 at the District headquarters with these three people, this  
23 committee. And that was it and I left.

24 Then I didn't hear again, and I called Bill again,  
25 said what's up? And he said, oh, I believe that Dr.

1 Ackerman had just come on board, or perhaps just come on  
2 board six months before, and Dr. Ackerman was still doing  
3 due diligence, I'm sure, about finding out the lay of the  
4 land and really looking at what she needed to support her  
5 vision for the District. And so I believe that at that  
6 point Dr. Ackerman was probably rearranging, I really don't  
7 know. All I know is I didn't hear for a long time until I  
8 got a call from a woman named Jackie Wright. And she said,  
9 that was in December of 2000, and she said, hi, I'm Jackie  
10 Wright, I'm the Executive Director of the Office of Public  
11 Engagement and Information for SFUSD, and I'd like to talk  
12 to you about your job application for the position of  
13 General Manager.

14 So, I went in and I met with Jackie, and we had a  
15 great interview, we really hit it off. And she said that the  
16 Superintendent had put the station under the Office of  
17 Public Engagement and Information. And that -- so Jackie  
18 interviewed me. And then she said, but this is really not  
19 for me to make the final decision about, it's going to be up  
20 to the Superintendent, so get out your date book and let's  
21 find a time when you can come and meet with the  
22 Superintendent. So, I did and we decided upon a time when  
23 both the Superintendent, because Ms. Wright had Dr.  
24 Ackerman's calendar somewhat. And I came back and Jackie  
25 and I went in and I met with the Superintendent, with Dr.

1 Ackerman. We spent about 20 minutes, half hour, she asked  
2 me about my vision of the station, a little bit about my  
3 background, she had read through my paperwork. She talked a  
4 little bit about her vision of the station. And we shook  
5 hands and she said, I think you're our candidate. So, I was  
6 pretty happy and that was it. And I began March 1st.

7 Q From the time of your interview with Dr. Ackerman,  
8 approximately how much time passed before you actually  
9 started on the job?

10 A I don't think very much. It was only probably  
11 about three weeks, maximum.

12 Q Just long enough for you to give notice where you  
13 were?

14 A Exactly.

15 Q All right. With respect to the first time that you  
16 had a chance to speak with Jackie Wright, that was the  
17 interview itself, or I guess what, she may have called you  
18 on the phone and said I'd like to have an interview with  
19 you, and so there would have been the first time with the  
20 brief phone conversation and then the second time was when  
21 you actually had a chance to talk with her, would that be  
22 right?

23 A Exactly.

24 Q When you spoke with Jackie Wright, did she give  
25 you any information to the effect that there was a license

1 renewal challenge that had been raised against the renewal  
2 application that SFUSD had filed for KALW?

3 A No, she did not.

4 Q At the time that you spoke with Ms. Wright, did  
5 you know that there was such a license renewal challenge?

6 A No, I did not.

7 Q Subsequently there was a follow-up conversation  
8 with Ms. Wright to setup an interview with Dr. Ackerman?

9 A Actually, we did it at that meeting. She said, I  
10 can't make the final decision here, Dr. Ackerman should make  
11 the final decision, get out your date book, let's find a  
12 time when you can come back and meet Dr. Ackerman.

13 Q Okay. So, at the second time when you had the  
14 interview with Jackie Wright, you were not aware that there  
15 was a license renewal challenge and that didn't come up in  
16 the conversation that you had with Jackie Wright?

17 A No, it did not.

18 Q Then there was a period, a relatively brief period  
19 apparently, between the second conversation/interview with  
20 Jackie Wright and then your interview with Dr. Ackerman,  
21 several weeks perhaps?

22 A I really don't remember. It didn't seem like that  
23 much of a gap.

24 Q So, conceivably certainly less than two months?

25 A Absolutely.

1           Q     Now, when you had a chance to talk with  
2     Dr. Ackerman, in the meantime, between the Jackie Wright  
3     interview and the Dr. Ackerman interview, did you become  
4     aware that there was a license renewal challenge against  
5     KALW's renewal application?

6           A     No, I did not.

7           Q     During the interview with Dr. Ackerman did it come  
8     to your attention that there was a license renewal  
9     challenge?

10          A     No, it did not.

11          Q     Following the interview with Dr. Ackerman and  
12     before you actually started to work at the radio station,  
13     did it come to your attention that there was a license  
14     renewal challenge?

15          A     No, it did not.

16          Q     Surprise, surprise.

17          A     Bingo.

18          Q     When you started to work at the radio station on  
19     March 1, 2001?

20          A     Yes.

21          Q     A happy date I hope. Did it come to your  
22     attention at that time that there was a license renewal  
23     challenge?

24          A     It came to my attention probably about two or  
25     three days after I had started work.

1 Q And what did you find out?

2 A I was told by Bill, oh, by the way, there's a  
3 license challenge against the station from 1997.

4 Q And in response to that, you said?

5 A Oh my God. You guys are kidding.

6 MS. REPP: Just a sort of spontaneous response.

7 BY MR. SHOOK:

8 Q Ms. Sawaya, I am showing you a letter from the  
9 Federal Communications Commission that's addressed to Ernest  
10 Sanchez?

11 A Yes.

12 Q And it concerns KALW Radio. And my question to  
13 you is, have you seen this letter before today?

14 A I might have, I cannot say for sure. My guess is,  
15 and this is only a guess, that I have not or that I did not,  
16 but quite frankly, sir, I really don't remember.

17 Q You're making me feel old.

18 A I'm just trying to be respectful.

19 Q All right. If could please just read to yourself  
20 what follows from the word 'Accordingly', and there are  
21 numbers one through five that extend from page two to page  
22 three, if you could just read that information to yourself?  
23 The FCC has an amazing habit of sometimes calling questions  
24 directives, I guess that's a little bit scarier than just a  
25 plain old question. Now, with respect to Directive No. 1,

1 were you aware that in March of 21001 that the FCC was  
2 inquiring or had wanted the information in response to a  
3 question or a directive like that?

4 A No. I really didn't start putting the pieces  
5 together probably until about mid March.

6 Q Until mid March.

7 A When I started to read through the files.

8 Q Now, were you asked by anyone to respond to  
9 Directive No. 1?

10 A No.

11 Q Do you know whether anyone at the radio station  
12 was asked to respond to Directive No. 1?

13 A I don't know.

14 Q Moving on to -- well, -- okay. Moving on to  
15 Director No. 2, were you asked to respond to Directive No.  
16 2?

17 A No.

18 Q Do you know of anyone at the radio station who was  
19 asked to respond to Directive No. 2?

20 A No.

21 Q Moving to Directive No. 3, were you asked to  
22 respond to Directive No. 3 by anyone?

23 A No.

24 Q Do you know whether anyone at the radio station  
25 was asked to respond to Directive No. 3?

1           A     I don't know.

2           Q     Directive No. 4, were you asked to respond by  
3 anyone to Directive No. 4?

4           A     No.

5           Q     Do you know whether anyone at the radio station  
6 was asked to respond to Directive No. 4?

7           A     I don't know.

8           Q     Directive No. 5, were you asked to respond by  
9 anyone to Directive No. 5?

10          A     No.

11          Q     Including part A, or subpart (a), whatever you  
12 want to call that?

13          A     No, not at the time of my arrival I was not.

14          Q     And do you know whether anyone at the radio  
15 station was asked to respond to Directive No. 5, including  
16 subpart (a)?

17          A     I don't know.

18          Q     Now, in front of you there happens to be a copy of  
19 a letter dated April 5 and it was filed at the Federal  
20 Communications Commission on April 6, 2001. And prior to  
21 the time this letter was filed with the FCC, did you see  
22 this letter?

23          A     I saw it in draft form.

24          Q     You saw it in draft form. Were you asked to  
25 provide any information or comments relative to the letter?

1           A     I really can't remember other than that I had put  
2     a few things in motion. I had asked that the Public File be  
3     moved into my office, into a locked cabinet. I did, the  
4     quarter was just ending actually towards the end of March,  
5     so I wanted to make sure that all the public affairs  
6     programs, things were correct as far as what was going to  
7     put in there from here on out.

8           Q     At least for that quarter you would have some  
9     control over how that --

10          A     Right, even though I came at the end of the  
11     quarter, I wanted to see what was the process, walk me  
12     through the process, what was your routine.

13          Q     And what was their routine?

14          A     The routine was to pull from, at that point the  
15     NPR website, the Issues Programs List from NPR, and to  
16     collect from the producers basically a who, what, how, when,  
17     where, why sheet for the public affairs programs, not all of  
18     them but those that really tackled substantive issues in the  
19     community.

20          Q     And as a consequence of that, a document or a  
21     series of documents was generated?

22          A     Yes.

23          Q     And who physically actually caused the documents  
24     to be generated?

25          A     I would say to Bill, Operations Manager, because

1 the producers push electronically their copy as the program  
2 is done, I think that's better than waiting, oh, give us the  
3 last three months. So, what I had asked the producers to do  
4 was just do it as you do it, just put us on your list as you  
5 give a run sheet to all your different guests and what not,  
6 and the announcer operators, just make sure Bill gets one  
7 and he pushes that into a file, I believe, on his computer  
8 and stores those up. And then I asked him to put those in a  
9 folder and hand those to me ten days before the end, after  
10 the end of the quarter.

11 Q Which he did?

12 A Yes.

13 Q So, sometime between April 1 and April 10,  
14 Mr. Helgeson gave you a file folder that had in it whatever  
15 information was necessary, so far as you know, to meet the  
16 requirements of the FCC for an Issues Programs List?

17 A Yes.

18 Q Did you personally review whatever it was that he  
19 gave you?

20 A I was curious. I hadn't heard all the programs,  
21 so I wanted to see what kind of topics they were tackling,  
22 and I read through them.

23 Q And did whatever information you receive comport  
24 with your understanding of what was required to be in that  
25 Public File?

1           A     With my understanding, yes. I may not have always  
2     the correct understanding but, from my understanding of  
3     public broadcasting and the role of the public broadcaster  
4     in the community, I believed that they fulfilled that  
5     function.

6           Q     Has the procedure for generating such lists  
7     changed in anyway since April of 2001?

8           A     Only that I've added more programs to be put into  
9     the file. And also when the war happened, I wanted to make  
10    sure that we listed what coverage that we gave when the war  
11    happened, both the war in Afghanistan and the war in Iraq.  
12    So, I wanted that to be pretty precise in case there were  
13    questions asked.

14          Q     Now, I want to focus your attention on some of the  
15    substantive information that appears in this letter, since  
16    when we talked the indication was that you at least had had  
17    the opportunity to review a draft?

18          A     Of this particular, yes.

19          Q     Yes. And somewhere in this mess I'll find mine  
20    instead of having to pull yours.

21          A     Go ahead.

22          Q     Let me see if I can find it first.

23                 MS. REPP: I think you had donated --

24                 MR. SHOOK: I may have. Do you have one?

25                 MS. REPP: No.

1           MR. SHOOK: Okay. I'll tell you what, let's see  
2 if we can do this so that both of us can look at it.

3           BY MR. SHOOK:

4           Q     Moving to page three of the April 5 letter that  
5 went to the Commission, there is the -- basically it's  
6 supposed to replicate the directive that came from the  
7 Commission, let's just see whether or not that was the case  
8 here. So, also side by side I'm showing you the February  
9 2001 letter that the Commission sent to SFUSD by way of Mr.  
10 Sanchez. And do the -- it appears that the Directives  
11 match?

12          A     Absolutely, yes.

13          Q     Now, in terms of the response, did you have any  
14 role, whatsoever, in providing substantive information that  
15 appears in the response, and please feel free to review the  
16 entire response if you need to before answering that?

17          A     When I found out about the license challenge, I  
18 wanted to talk to the station's lawyer and find out what was  
19 going on.

20                MS. REPP: Excuse me, Nicole, if I could just  
21 interject that when you discuss your conversations with  
22 Ernie Sanchez, that you not get into the substance of the  
23 conversation, you can mention that you have had a  
24 conversation, because of the attorney/client privilege you  
25 don't have to go into substance.

1 THE WITNESS: Okay. Thank, Marissa.

2 MS. REPP: Okay.

3 THE WITNESS: I needed to be briefed and  
4 Ms. Wright needed to be briefed, and as it turned out,  
5 Dr. Ackerman needed to be briefed. And so we called Ernie  
6 and I was just confused as to why something from 1997 had  
7 languished.

8 Ernie spoke to Jackie and I, and Jackie and I felt  
9 that we needed to prod, get something happening with regard  
10 to the license challenge. That it felt like it was just  
11 languishing there. We didn't know why but it was like,  
12 well, we have to put some movement behind this. So, we  
13 asked Ernie, Ernie, put some movement behind it. And he  
14 said, I'm going to draft a response, I'll draft something,  
15 you can look at this. I must say I never connected it to  
16 this. I was still trying to figure out how to use the  
17 copier. And this is really a complex situation and it had  
18 happened a long time ago. And I didn't want to -- it takes  
19 me awhile to decide about complexity, I didn't want to come  
20 to any quick judgments, especially given the fact that some  
21 people were still at the station that were involved in this.

22 So, then Ernie came -- this is April, so I had all  
23 of March, by mid March I was starting to read through the  
24 original complaint by GGPR and the supplemental, and the  
25 license, actually the Public File looked in very good order